IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Bail Appl..No. 4311 of 2007()

(C.C. NO. 114/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURTI, KOLLAM)

PETITIONER/ACCUSED

M.R.PRASAD AGED 33 YEARS, RESIDING
AT S.P.NIVAS, PERUMPUZHA, PERUMPUZHA P.O.
KOLLAM DISTRICT.

BY ADV. SRI.JOHNSON GOMEZ

RESPONDENTS: STATE & COMPLAINANT
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1. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
AT ERNAKULAM.

2. R.RAJAN, AGED 62 YEARS, SAJU BHAVAN,
PANAVILA, PERUMPUZHA, PERUMPUZHA P.O.,
KOLLAM DISTRICT.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No. 4311 Of 2007

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Dated this the 9th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The case was filed as early as in 2004. According to the petitioner when the case came up for trial on 22.9.06, the petitioner could not appear before the learned Magistrate. His absence was not wilful, but was on account of reasons beyond his control. He, it is submitted, has filed an application to exempt him from personal appearance and permit him to appear through counsel. It is further submitted that it was made clear to the learned Magistrate that the petitioner does not dispute his identity. In spite of the fact that the petitioner's counsel was not ready to go for trial, the learned Magistrate dismissed the application to condone the absence of the petitioner. Due to the nonappearance of the petitioner a non bailable warrant of arrest was issued against the petitioner.

2. The petitioner therefore finds himself facing the predicament of warrants of arrest and other coercive processes issued by the learned Magistrate chasing him. According to the petitioner he is absolutely innocent. His absence earlier was not wilful. He had

applied to excuse his absence and was prepared to go on with the trial in the presence of his counsel. There was no dispute regarding the identity. The petitioner is willing to appear before the learned Magistrate and co-operate with the Court for the expeditious disposal of the case against him. But he apprehends that his application for regular bail may not be considered by the learned Magistrate, in accordance with law and expeditiously. He therefore prays that a direction may be issued under sections 438 Cr.P.C, prays the learned counsel for the petitioner.

3. I do not find any circumstances which would justify invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the normal and ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously- on the date of surrender itself.

(R.BASANT, JUDGE)

sj